IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
PECOS DIVISION

UNITED STATES OF AMERICA,	§	
	§	
v.	§	**P:18-CR-00592-DC-1**
	§	
ANDRES SORIANO,	§	
Defendant.	§	

ORDER ADOPTING REPORT & RECOMMENDATION

BEFORE THE COURT is United States Magistrate Judge David B. Fannin's Report and Recommendation (R&R) filed in the above-captioned cause on February 6, 2019, in connection with Defendant Andres Soriano's Motion to Suppress filed on November 2, 2018. (Docs. 18, 40). Defendant filed Objections to the R&R on February 20, 2019. (Doc. 41). After due consideration, the Court **ADOPTS** the Magistrate Judge's R&R in its entirety (Doc. 40), **OVERRULES** Defendant's Objections to the R&R (Doc. 41), and **DENIES** Defendant's Motion to Suppress (Doc. 18).

I. FACTUAL BACKGROUND

On September 6, 2018, Defendant was indicted under 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2 for aiding and abetting others and knowingly possessing with intent to distribute 5 kilograms or more of a controlled substance. (Doc. 8). According to the complaint, Defendant, who was traveling alone from El Paso, Texas to Odessa, Texas, was stopped by State Trooper Carla Rodriguez (Trooper Rodriguez) and State Trooper Javier Ramirez (Trooper Ramirez) on August 19, 2018. (Doc. 1 at 2). Trooper Rodriguez initiated the stop because Defendant was traveling at 90 miles per hour in an 80 miles per hour zone, in violation of Texas Transportation Code 545.352, and illegal window tint, in violation of Texas Transportation Code 547.613. *Id.*

After questioning the Defendant, Trooper Rodriguez requested consent to search the vehicle. The complaint indicates Defendant gave Trooper Rodriguez consent. *Id.*

On November 2, 2018, Defendant filed a Motion to Suppress. (Doc. 18). The Motion was referred to the Magistrate Judge pursuant to 28 U.S.C. § 636 and Appendix C of the Local Court Rules. (Doc. 19). On November 16, 2018, the Magistrate Judge set a hearing on the Motion for November 29, 2018. (Doc. 22). The hearing took place on the date set. On February 4, 2019, Defendant, without leave of court, filed a Supplement to the Motion to Suppress on the issue of whether his consent was voluntary. (Doc. 36). The Magistrate Judge issued his R&R on February 6, 2019. (Doc. 40).

Defendant's Motion argued that his Fourth Amendment rights were violated because he was unjustifiably detained for a period longer than was necessary to issue a traffic citation and because his vehicle was searched without probable cause or his voluntary consent. (Doc. 18). Consequently, any evidence obtained during the traffic stop is the fruit of the poisonous tree and should be suppressed. Defendant maintains that the search was not voluntary because he did not know he could refuse to consent, that Trooper Rodriguez retained his documents, that Defendant was promised a fine and warning, and that Defendant was "confronted with exaggerated claims of inconsistent statements and interrogation about the presence of drugs." *Id.* at 1.

The Government responded, countering that the stop was not unreasonably prolonged. (Doc. 23 at 9). Instead, the Government alleged the troopers had legitimate reasons for continuing to question Defendant during the stop. *Id.* Further, the Government argued that the Defendant voluntarily consented to the vehicle search. *Id.*

The Magistrate Judge denied the Motion to Suppress, finding that based on the totality of evidence Trooper Rodriguez had reasonable suspicion to extend the stop. (Doc. 40 at 7). As to

the voluntary consent issue, the Magistrate Judge found that three of the six factors used to determine whether consent was voluntarily given weighed in favor of a finding of voluntariness and that the remaining three weighed against voluntary consent. *Id.* at 13. Based on the totality of the evidence, the Magistrate Judge recommended that the Court find the Defendant voluntarily consented to the search of his vehicle. *Id.*

Defendant timely filed his Objections to the Magistrate Judge's R&R. (Doc. 41). Specifically, Defendant objects to the following findings:

1. [Defendant] objects to the finding that Trooper Carla Rodriguez-Montelong's testimony was credible.

2. [Defendant] objects to the finding that he made inconsistent statements about his visit to his mother.

3. [Defendant] objects to the finding that Rodriguez's suspicion was not dispelled when [Defendant] showed her there were clothes in the duffle bag.

4. [Defendant] objects to the absence of a finding that the stop was unreasonably prolonged when Rodriguez asked to see inside the trunk, ran a criminal history check, and ran a border check.

5. [Defendant] objects to the finding that the border check showed he had avoided the Sierra Blanca checkpoint.

6. [Defendant] objects to the finding that the criminal check history showed that he had a recent arrest not previously disclosed.

7. [Defendant] objects to the finding that the results of the criminal history check gave Rodriguez additional reason to suspect him.

8. [Defendant] objects to the magistrate court's finding that Rodriguez 'asked for consent and received it prior to mentioning that Defendant would receive two citations and a warning, but before confirming she had consent.'

9. [Defendant] objects to the conclusion that there were 'no coercive police procedures.'

10. [Defendant] objects to the findings that there was no evidence regarding Defendant's education and that he is of average intelligence, making this factor weigh marginally in favor of voluntariness.

11. [Defendant] objects to the magistrate's treatment of [Defendant's] belief regarding incriminating evidence as marginal.

(*See generally* Doc. 41). The Government did not file a response.

II. LEGAL STANDARDS

A. Objections to an R&R

Any party who desires to object to a Magistrate Judge's findings and recommendations must serve and file written objections within fourteen (14) days after being served with a copy of the findings and recommendation. 28 U.S.C. § 636(b)(1). A party's objections to an R&R entitle him to a *de novo* review of those claims by this Court. 28 U.S.C. § 636(b)(1). However, objections must specifically identify those findings or recommendations to which objections are being made. The Court need not consider frivolous, conclusive, or general objections. *See Battle v. United States Parole Comm'n,* 834 F.2d 419 (5th Cir. 1987).

B. Fourth Amendment Protections

The Fourth Amendment protects individuals from unreasonable searches and seizures. U.S. Const. Amend. IV; *United States v. Grant*, 349 F.3d 192, 196 (5th Cir. 2003). "Searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967) (citations omitted). The exclusionary rule allows a defendant to suppress the evidentiary fruits of a violation of his

Fourth Amendment rights. *United States v. Pack*, 612 F.3d 341, 347 (5th Cir.), *modified on other grounds*, 622 F.3d 383 (5th Cir. 2010).

Traffic stops are considered seizures within the meaning of the Fourth Amendment but are more similar to investigative detentions than formal arrests. *United States v. Valadez*, 267 F.3d 395, 397 (5th Cir. 2001). In such instances, limited searches and seizures are justified when the police have reasonable suspicion supported by articulable facts that a crime has been or is being committed. *See United States v. Vickers*, 540 F.3d 356, 360–61 (5th Cir. 2008). The legality of traffic stops for Fourth Amendment purposes is analyzed under the two-part inquiry articulated by the Supreme Court in *Terry*. *See United States v. Spears*, 636 F. App'x 893, 898 (5th Cir. 2016). First, the Court determines whether stopping the vehicle was initially justified by reasonable suspicion. *Id.* Second, the Court analyzes whether the officer's subsequent actions were reasonably related in scope to the circumstances that justified the stop of the vehicle in the first place or to dismiss reasonable suspicion established during the stop. *Id*.

Where a search and seizure are conducted without a warrant, "the government bears the burden of proving, by a preponderance of the evidence, that the search and seizure were constitutional." *United States v. Guerrero-Barajas*, 240 F.3d 428, 432 (5th Cir. 2001).

III. DISCUSSION

Defendant does not argue that stopping the vehicle was not initially justified by reasonable suspicion, only that the stop was unjustifiably prolonged. Accordingly, the Magistrate Judge determined only whether the second prong of the *Terry* inquiry had been met. (Doc. 40 at 7). The Magistrate Judge found that the stop complied with the Fourth Amendment and that Defendant consented to the search of the vehicle. *Id.* Defendant's Objections relate to the Court's

factual and legal conclusions concerning both issues. (Doc. 41). The Court will now conduct a *de novo* review of the R&R in light of the Objections.

A. Defendant objects to the finding that Trooper Rodriguez's testimony was credible.

Defendant objects to the Magistrate Judge's finding that Trooper Rodriguez's testimony was credible, arguing that the video of the stop shows that Trooper Rodruguez made statements that were "verifiably incorrect and calculated to enhance the government's case." (Doc. 41 at 1). Defendant also directs the Court to Trooper Rodriguez's testimony to sustain his contention that her testimony was not credible. *Id.* at 2. "Due to the procedural safeguards contained in [28 U.S.C. § 636(b)(1)], a district judge may accept a magistrate's findings concerning credibility and not violate due process." *Louis v. Blackburn*, 630 F.2d 1105, 1109 (5th Cir. 1980). "In making a final determination, the district court has the benefit of a carefully developed record, a magistrate's thoughtful consideration of the issues, and argument of counsel regarding specifics not agreeable to the parties." *Id.* (citing *United States v. Whitemire*, 595 F.2d 1303, 1305 (5th Cir. 1979)). After reviewing the video of the stop, examining the transcript of the hearing, and evaluating the exhibits presented, this Court agrees with the Magistrate Judge's assessment of Trooper Rodriguez's credibility. Defendant's objection is overruled on this point, and the credibility determination of the Magistrate Judge is adopted.

B. Defendant objects to the finding that he made inconsistent statements about his itinerary.

Defendant next objects to the Magistrate Judge's finding that Defendant made inconsistent statements regarding the length of his visit with his mother. (Doc. 41 at 3).

Defendant contends that the claimed discrepancy was an initial short statement that was later clarified. *Id.*

When asked where he was going and how long he was staying, Defendant first answered that he was returning to El Paso that same night or the following day if all went well, explaining that this is because he was traveling to Odessa where his mother lives with his brother to visit his mother only. (Doc. 26-1 at 3). After seeing the suitcase in the backseat, Trooper Rodriguez asked Defendant why he was carrying a suitcase if his trip—to visit his mother in Odessa—was supposed to be a short one. *Id.* at 4. Defendant answered that he was going to stay a couple of days with his mother. *Id.* He proceeds to explain that if his mother is not in Odessa, he will travel back to El Paso, but if she is there, he will stay a couple of days. The Court finds that these statements are inconsistent. When initially asked why he was traveling to Odessa Defendant clearly and unequivocally stated he was traveling to Odessa and heading back to El Paso that same day or the following day *because* he was only traveling to Odessa to visit his mother. *Id.* Defendant's initial statement indicated that even if his mother were in Odessa, he would have returned to El Paso the same day or the following day. Defendant's subsequent statement, however, that only if his mother is not in Odessa will he travel back to El Paso that same day or the following day, is contrary to his previous statement. Consequently, the Court overrules the Defendant's objection on this point.

C. Defendant objects to the finding that Trooper Rodriguez's suspicion was not dispelled when Defendant showed her there were clothes in the duffle bag.

Defendant's basis for this objection is unclear. Defendant states that the Magistrate Judge found that Trooper Rodriguez had a reasonable suspicion that the car and not just the suitcase contained contraband and seems to suggest that the evidence and testimony show that Trooper Rodriguez was only focused on what was in the suitcase to that point.

To the extent that Defendant objects to the finding that Trooper Rodriguez's suspicion was not dispelled when Defendant showed her what was in the suitcase, the Court overrules the objection. It is clear from the video that after conducting the stop, Trooper Rodriguez returned to her vehicle with her partner and stated that she found the circumstances "weird." (Ex. G-2). Further, Trooper Rodriguez asks Trooper Ramirez to run several searches—criminal history, border, driver's license and vehicle check—still suspicious that something is not right with the vehicle and Defendant. *Id.*

The Court also finds, upon conducting a *de novo* review, that Trooper Rodriguez had reason to believe that the vehicle and not just the suitcase contained illegal items. Although the suitcase prompted the questions regarding Defendant's trip to Odessa, other circumstances caused Trooper Rodriguez to suspect, based on her experience, that criminal activity was occurring, such as inconsistencies in Defendant's story, the window tint, and his nervous behavior. Accordingly, to the extent Defendant is arguing that Trooper Rodriguez's suspicion should have been dispelled when she observed the items that were in plain view after Defendant opened the suitcase, the Court overrules that objection.

D. Defendant objects to the absence of a finding that the stop was unreasonably prolonged when Trooper Rodriguez asked to see inside the trunk and ran the criminal history and border checks.

Defendant claims that although Trooper Rodriguez's suspicion should have been dispelled after she saw inside the suitcase, she asked Defendant to see inside the trunk, which is an unlawful prolongation of the stop. (Doc. 41 at 3). Defendant also argues that the four checks run by Trooper Rodriguez were no longer justified because her suspicion that the vehicle contained illegal items was dismissed. As noted above, the Court believes Trooper Rodriguez had reason to believe the vehicle contained illegal items. Thus, her inquiry as to the contents of

the trunk did not unreasonably prolong the stop. Moreover, Defendant's interpretation of what took place is clearly incorrect. Trooper Rodriguez did not ask the Defendant to see inside the trunk. (Doc. 26-1 at 6). Instead, Trooper Rodriguez, after asking if there was anything illegal in the vehicle and then asking specifically about the suitcase, proceeded to ask Defendant what was in the trunk. *Id.* At no point does Trooper Rodriguez ask the Defendant to open his trunk or to show her the contents of the trunk as she did with the suitcase. Instead, the Defendant, of his own free will, begins to move toward the trunk and answers Trooper Rodriguez's question stating he is carrying gasoline. Trooper Rodriguez follows the Defendant as he moves to the trunk and responds to Defendant's answer by questioning why he is carrying a large quantity of gasoline. Based on what was found in the trunk, the disparities in Defendant's story, and Defendant's nervous behavior, the Court finds that Trooper Rodriguez had reason to run the border and criminal history checks.

Consequently, Defendant's objection on this point is overruled.

E. Defendant objects to the finding that the border check showed he had avoided the Sierra Blanca checkpoint.

Defendant asserts that no evidentiary basis supports the finding that Defendant intentionally avoided the Sierra Blanca checkpoint. Defendant's argument is misguided. The Magistrate Judge considered the fact that Defendant accessed I-10 via a route that does not go through the Sierra Blanca checkpoint, together with other facts, to conclude that Trooper Rodriguez had reasonable suspicion of criminal activity. At no point does the Magistrate Judge find that the Defendant intended to avoid the Sierra Blanca checkpoint by taking a different route, which is what the Defendant appears to be arguing in this objection. Accordingly, the Court overrules this objection.

F. Defendant objects to the finding that the criminal check history showed that he had a recent arrest not previously disclosed.

Defendant disputes the Magistrate Judge's finding that the criminal history showed Defendant had been arrested two months prior and that he had not disclosed that previously. According to Defendant, the criminal history merely indicated that Defendant had a pending case in El Paso. (Doc. 41 at 4–5). After reviewing Trooper Rodriguez's testimony and the record, the Court overrules the Defendant's objection. Trooper Rodriguez testified that upon running the Defendant's criminal history, the system showed "that [he had] been arrested for [theft]." Consequently, the Magistrate Judge's finding was not erroneous. The fact that Defendant was released on bond after his arrest does not negate the fact that he was arrested before being released nor that the system showed that the last time Defendant had been arrested was two months prior and not one year and nine months prior, as Defendant first claimed.

G. Defendant objects to the finding that the results of the criminal history gave Trooper Rodriguez additional reason to suspect Defendant.

Defendant raises two objections here: first, Defendant objects to the finding that the results of the criminal history gave Trooper Rodriguez an additional reason to suspect Defendant; and second, Defendant objects to the Magistrate Judge's conclusion that the stop complied with the Fourth Amendment. (Doc. 41 at 5).

As to the first objection, Defendant claims that Trooper Rodriguez misunderstood the difference between answering a criminal complaint and being arrested. *Id.* Thus, her suspicion based on Defendant's inconsistent answer regarding his arrest history was not reasonable. As discussed earlier, Trooper Rodriguez's criminal history check indicated that Defendant had been arrested two months prior for theft, possession of a controlled substance, and the unlawful carry of a dangerous weapon. (Doc. 33). When initially asked, Defendant stated that the last time he

was arrested was one year and nine months prior. Consequently, Trooper Rodriguez had an additional reason to suspect Defendant was engaged in criminal activity, and thus, to continue questioning him. This objection is, therefore, overruled.

As to the second objection, Defendant maintains that Trooper Rodriguez's continued inquiry into the possible presence of something illegal in the vehicle exceeded the purpose of a traffic stop that was based on no more than a hunch. *Id.* The Court overrules the Defendant's objection. In doing so, the Court affirms that Trooper Rodriguez's experience and perception of Defendant's nervous behavior, the inconsistency in the Defendant's itinerary, the large quantity of gasoline, the result of the computer system searches, and the discrepancy in Defendant's answer regarding his arrest history are facts that, when viewed in totality, give rise to reasonable suspicion. Accordingly, Trooper Rodriguez was justified in extending the stop to question Defendant about potential criminal activity—including carrying illegal items in his vehicle.

H. Defendant objects to the Magistrate Judge's finding that Trooper Rodriguez asked for and was given consent prior to mentioning that the Defendant would receive two citations and a warning, but before confirming she had consent.

Defendant cites Document 26-1 at page 7, arguing that the record indicates that Trooper Rodriguez told Defendant he would receive a citation before receiving consent to search the car. (Doc. 41 at 6). However, Defendant's interpretation of the source for the Magistrate Judge's finding is incorrect. Page 10 of Document 26-1 contains the conversation that is the foundation of the Magistrate Judge's conclusion:

17:07 Trooper Rodriguez: "*Do you give me permission to check the car?*"

17:18 Defendant: "*Check it.*"

17:12 Trooper Rodriguez: "If I call the dog right now from the checkpoint, do you think that it will alert?"

17:17 Defendant: "No."

17:17 Trooper Rodriguez: "No?"

17:18 Defendant: "No, you can bring him."

17:20 Trooper Rodriguez: "Ok."

17:21 Trooper Rodriguez: "The system shows that you don't have a license. *It's going to be a citation for the no license and a citation for the speed, ok?*"

17:28 Defendant: "It's ok."

17:29 Trooper Rodriguez: "You are going way too fast."

17:30 Defendant: "Perfect."

17:30 Trooper Rodriguez: "*It's going to be a warning for the tint*. As you were able to see, it's too dark, you have 13."

17:35 Defendant: "Ok."

17:36 Trooper Rodriguez: "It's going to be a warning for the tint."

17:38 Defendant: "I'll take it off."

17:38 Trooper Rodriguez: "It's very important that you fix it."

17:40 Defendant: "I'll take it off as soon as I get to El Paso."

17:42 Trooper Rodriguez: "*Now that you gave me permission to check the car, I'm going to check it*."

17:44 Defendant: "*Yes, it's ok.*"

(Doc. 26-1 at 10–11) (emphasis added). As found by the Magistrate Judge, at 17:18, Defendant consents to Trooper Rodriguez searching the vehicle. *Id.* Subsequently, at 17:21 and 17:30, Trooper Rodriguez communicates to Defendant that he will receive two citations, one for driving without a license and another for speeding, and that he will receive a warning as to the window tint. *Id.* Finally, Trooper Rodriguez confirms that Defendant has consented to her searching the vehicle at 17:42. Accordingly, the Court overrules Defendant's objection to the Magistrate Judge's finding that Trooper Rodriguez "asked for consent and received it prior to mentioning

that Defendant would receive two citations and a warning, but before confirming she had consent."

Defendant raises a second objection to the Magistrate Judge's finding that informing Defendant that he would receive two citations and a warning was not a coercive police procedure. Defendant argues that this objection is augmented by the fact that Trooper Rodriguez asked for consent to search the vehicle after promising a citation but before issuing it and for stating that he was receiving a citation because Defendant was honest.

The Court has already explained that the Magistrate Judge's finding as to the *two citations and a warning* is correct. The record unquestionably reflects that Trooper Rodriguez notified Defendant that he was receiving two citations and a warning immediately after requesting consent but before confirming she had consent. (Doc. 26-1 at 10–11). Accordingly, Defendant's objections related to this conversation are overruled.

To the extent that Defendant relies on an earlier conversation between Trooper Rodriguez and Defendant the Court also overrules the objection for the following reasons. Before running the Defendant's criminal history, license check, border check, and vehicle check, Trooper Rodriguez had the following conversation with Defendant:

> 8:03 Trooper Rodriguez: "I'm going to check the documents in the system, ok, the license to see what comes out, and the information for the vehicle, ok."
>
> 8:13 Defendant: "It's ok."
>
> 8:14 Trooper Rodriguez: "*In the meantime*, it's going to be a citation for the license because you just said that it was suspended, and you are being honest with that, ok."
>
> 8:19: Defendant: "Ugh, huh."
>
> 8:19 Trooper Rodriguez: "So it's going to be a citation for the no license, *then depending on what comes out in the system, from there we'll continue.* Ok."

8:26 Defendant: "Perfect."

(Doc. 26-1 at 7) (emphasis added). The Court finds that this interaction was not a promise that Trooper Rodriguez would only issue a citation. Trooper Rodriguez advised Defendant that if anything else came up in the system, a different course of action might be necessary. Her subsequent course of action would presumably be based on whatever appeared in the system. After confronting Defendant about the inconsistencies in his statements, Trooper Rodriguez requested consent to search the vehicle. The request took place nine minutes after Trooper Rodriguez told the Defendant he would receive a citation for driving with a suspended license.

Given the course of events, the Court finds that Trooper Rodriguez's initial assertion that she would issue a citation for driving with a suspended driver's license was not a coercive police procedure meant to obtain Defendant's consent to search the vehicle. *United States v. Perales*, 886 F.3d 542, 548 (5th Cir. 2018) ("[A]lthough Agent Tamez asked Perales a series of questions related to his itinerary and ownership of the vehicle, Agent Tamez's announcement that he would issue Perales a warning is not analogous to the [coercive] statements made in *Robertson*.").

I. Defendant objects to the conclusion that there were no coercive police procedures.

Defendant alleges that he presented seven facts to evince that coercive police procedures were utilized during the stop such that Defendant's consent to search the vehicle was not voluntary. (Doc. 41 at 6–7). He argues the Magistrate Judge only considered three of the seven facts. *Id.*

Defendant first urges the Court to find that the officers' retention of Defendant's documents was a coercive procedure, in light of other facts. Thus, the Court will look at the other facts raised to prove coercive procedures first.

One of the alleged coercive procedures is Trooper Rodriguez's assertion that the Defendant would receive a citation and a warning because he was honest. For the reasons previously articulated, the Court finds that this was not a coercive police procedure.

Next, the fact that Trooper Rodriguez continued to interrogate the Defendant after running the checks and receiving information indicating that Defendant's statements regarding his arrest history were inconsistent was not coercive. Trooper Rodriguez had already explained to Defendant that she would run checks and take it from there. Given the discrepancies, Trooper Rodriguez had reason to continue questioning Defendant.

The Court also believes that Trooper Rodriguez's questions regarding the inconsistencies in Defendant's statements were not intended to trick Defendant into consenting nor does Defendant point to case law indicating that confronting a Defendant with inconsistent statements is a coercive police procedure. The Court finds Defendant's argument conclusory as he does not explain how confronting the Defendant about the inconsistencies in his statements is a coercive tactic.

Moreover, Trooper Rodriguez's statement to Defendant that she had conferred with Trooper Ramirez and they both agreed that she was clear, despite being dishonest, is not the type of "trickery" the Fifth Circuit has deemed a coercive tactic. According to Defendant, Trooper Rodriguez made the statement to pressure the Defendant immediately before asking for consent to search the vehicle. The Court disagrees. The statement was made immediately after Defendant recanted his statement that he had been arrested a year and nine months prior and instead admitted to being arrested for theft two months prior. After this discussion, Trooper Rodriguez expressed her belief that she was clear and that Trooper Ramirez believed she was being clear and confronted Defendant about the discrepancies in his statements regarding his itinerary and

his arrest history. She then asked him if he understood everything she was saying. Defendant explained that he was confused about the questions regarding his arrest history and they continued to discuss the topic. After having that conversation, Trooper Rodriguez asked the Defendant whether there was anything illegal in the vehicle and subsequently requested consent to search the vehicle. If anything, Trooper Rodriguez's statement was meant to ensure the Defendant understood Trooper Rodriguez throughout the entire stop and to prompt the Defendant to answer truthfully. It was not meant to pressure the Defendant to consent to the search.

Finally, the Court finds that Defendant's lack of awareness of his right to refuse consent does not taint voluntariness of consent. *United States v. Sutton*, 850 F.2d 1083, 1085 (5th Cir. 1988) (explaining that during questioning, officers are not required to give the person being questioned *Miranda* warnings nor explain to them the right to refuse consent to a search). Consequently, in the absence of other facts suggesting coercive procedures were used to obtain Defendant's consent, the Court finds that the troopers' retention of Defendant's documents does not in and of itself indicate that coercion was used. *Perales*, 886 F.3d at 542 (finding consent was voluntary although the agent retained the defendant's identification documents during the stop and told defendant he would only be issued a warning).

After evaluating the video of the stop, the testimony of Trooper Rodriguez and Defendant, respectively, and the evidence presented at the hearing, the Court finds that no coercive police procedures were utilized in obtaining Defendant's consent to search the vehicle. Consequently, the Court overrules the Defendant's objection.

J. Defendant objects to the findings that there was no evidence regarding Defendant's education and that he is of average intelligence, making this factor weigh marginally in favor of voluntariness.

Defendant alleges that Defendant's junior high education from Mexico should weigh against a finding of voluntariness because "he lacked the basic civics education that most people in the United States receive regarding their rights when interacting with police." (Doc. 41 at 9). The Court agrees with Defendant that there was evidence regarding Defendant's education. (Docs. 18 at 8; 36 at 10; 36-1 at 1). Nonetheless, there is no case law stating that where a defendant completes only junior high and in a different country, he lacks average education or intelligence. Other courts have found that despite a defendant's limited education, there may be other evidence showing he is of average intelligence. *See, e.g.*, *United States v. Staton*, No. CR. 06-107-KKC, 2007 WL 136310, at *5 (E.D. Ky. Jan. 16, 2007) (finding the defendant was of at least average intelligence even though the defendant only completed eighth grade, considering the facts that defendant was sixty years old, had a criminal history and thus was not a "newcomer to the law"); *United States v. Buendia-Santos*, No. 216CR00135KKDGMB, 2016 WL 5403100, at *3 (M.D. Ala. Aug. 29, 2016) (concluding the defendant's education and intelligence, "though somewhat limited, do not compel the conclusion that [defendant] was particularly susceptible to coercion," weighing the fact that defendant had "approximately an eighth-grade education in Mexico and is of low–average intelligence").

Similarly, this Court finds that Defendant's education, although limited, does not indicate that the Defendant was susceptible to coercion. Defendant's previous interactions with the law also indicate he is not a "newcomer to the law." *See, e.g.*, *Staton*, 2007 WL 136310, at *5. Moreover, his helpful demeanor during the stop, his interaction with the troopers, and his testimony evince that he is at least of average intelligence. Thus, the Court finds the Magistrate Judge's conclusion that the education and intelligence factor weighs marginally in favor of voluntariness is correct.

K. Defendant objects to the Magistrate Judge's treatment of Defendant's belief regarding incriminating evidence as marginal.

Defendant finally contends that the fact that he believed incriminating evidence would be found means his consent was not freely and voluntarily given. Thus, he objects to the Magistrate Judge's finding that this factor "weighs *marginally* against a finding of voluntariness." (Docs. 40 at 12; 41 at 9) (emphasis added). As noted by the Magistrate Judge, the record is devoid of evidence indicating Defendant's belief as to whether incriminating evidence would be found during the search. While it is true that the Defendant was aware that there was cocaine in the suitcase, it is also the case that the Defendant had already opened the suitcase to show the officers its contents. Perhaps the Defendant believed that the search would not reveal evidence that would incriminate him because he had already exposed the contents of the suitcase. In any case, the Court finds that the Magistrate Judge's treatment of Defendant's belief regarding incriminating evidence as marginal was correct when weighing the factors, especially Defendant's calm and helpful demeanor, and the lack of evidence on this point. *See, e.g.*, *United States v. Kelley*, 981 F.2d 1464, 1471 (5th Cir. 1993) (considering the lack of evidence as to defendant's belief and finding that despite being aware that illegal items might be found in the vehicle, when considering the factors as a whole, the evidence supported a finding of voluntariness).

In conclusion, based on the totality of the circumstances, the Court finds that Trooper Rodriguez had reasonable suspicion to extend the stop and that Defendant's consent was voluntary.

IV. CONCLUSION

For the reasons stated above, the Defendant's Objections to the Magistrate Judge's R&R are **OVERRULED** (Doc. 41), and the Court **ADOPTS** the R&R in its entirety (Docs. 40).

Accordingly, the Court **ORDERS** that Defendant's Motion to Suppress is **DENIED**. (Doc. 18).

It is so **ORDERED**.

SIGNED this 1st day of April, 2019.

DAVID COUNTS
UNITED STATES DISTRICT JUDGE